30885

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 420.

FRED LEE RICE ET AL.

vs.

JOHN C. AMES, MARSHAL OF . . NORTHERN DISTRICT OF THE STATE OF ILLINOIS.

APPEAL FROM THE DISTRICT COURT IN AND FOR THE NORTHERN DISTRICT OF THE STATE OF ILLINOIS, NORTHERN DIVISION THEREOF.

Reply Brief on Motion to Admit to Bail.

May it please the court:

In the argument in support of the motion to admit appellants to bail, section 6 of the treaty between the United States and Great Britain is cited (p. 3), and that section is fatal to this motion. In this case the "surrendering State" is the United States, and its laws "regulating extradition" furnish no authority for bail, as is admitted

in said argument (p. 4). It would therefore not be "in conformity with the laws regulating extradition for the time being in force in the surrendering State," to allow bail to be given herein, and if the prisoners escaped it would amount to a nullification of such laws and of the rights guaranteed by treaty. This proposition is supported by the opinion in *Ex parte* Erwin, 7 Tex. App., 288, which was a case of rendition, and the effect of a provision of the constitution of Texas providing for bail was considered and held not controlling.

The implication of the argument that the constitution or laws of the State of Illinois providing for bail control this case is disposed of by U. S. *vs.* Rauscher, 119 U. S., 407, holding that the Federal authority is exclusive in international extradition, and that States have no power over the same.

The fact that (with one exception) none of the causes reported in this court or in the district or circuit courts touching the extradition act shows any attempt to get bail on the part of the parties arrested is itself significant, as more than a century has elapsed since the first extradition treaty. The exception is *In re* Carrier, 57 Fed. Rept., 578, a case where the facts bear a remarkable similarity to those herein. The opinion of Judge Hallett in that case practically covers all the grounds urged on behalf of this motion, and, being the only adjudication by a Federal court, I ask your attention to its reasoning.

II.

The controlling legal principle, I urge, is that the laws enacted by Congress have no extra-territorial effect, and do not provide for the punishment of crimes and misdemeanors committed in foreign countries having settled governments, nor for bail in such cases. Therefore, wherever bail is referred to in the rules of this court or in Federal or State laws, it of course means bail in a case to be *tried* under

such rule or law, or of which the Federal or State laws have jurisdiction.

If this proposition is sound (and it seems it would be an impertinence to cite authorities upon a rule so elemental), then the acts and decisions cited in support of the motion are not applicable.

III.

Since neither the treaty between the United States and Great Britain nor the acts of Congress provide for bail in extradition cases, there can be no authority, unless it be the common law recognized by both of said countries; but by the common law bail was not allowed in criminal cases since I Edw. IV, c. 2. Bail was always refused in cases of felony (Rex *vs.* Wyer, 2 T. R., 77).

I therefore submit that bail is not allowable in this case, and the matter is entirely discretionary with the court (U. S. *vs.* Lawrence, 4 Cranch, 518), and no ground has been shown overcoming the finding of the commissioner or the judge of the district court below to warrant bail if it were allowable.

Respectfully submitted.

Lynden Evans

Attorney for Appellee.